DOCUMENT RESUME

ED 052 862 RC 005 447

TITLE	Report of the Assembly Subcommittee on Indian Affairs to the Standing Committee on Governmental Operations.
INSTITUTION	New York State Assembly, Albany.
PUB DATE	Mar 71
NOTE	62p.
EDRS PRICE	EDRS Price MF-$0.65 HC-$3.29
DESCRIPTORS	*American Indians, Educational Benefits, Intercommunication, Law Enforcement, *Legal Problems, *Reservations (Indian), *Social Services, *State Laws, Taxes
IDENTIFIERS	*New York State

ABSTRACT

The 1970 legislative session of the New York State Assembly created the Subcommittee on Indian Affairs to review New York's Indian Law and state services provided to Indian reservations. Seven hearings were held on reservations to gather opinions, suggestions, and criticisms of the on-reservation Indian community. In addition, a special hearing was held to explore circumstances surrounding extensive land claims made by the Oneida Nation. This report contains a summary of the subcommittee's activities during a 10-month period and recommendations for administrative actions in the areas of communication, jurisdiction, administration, housing, hunting and fishing rights, factionalism, cultural preservation, taxation, and land rights. (JH)

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Report of the Assembly Subcommittee on Indian Affairs to the Standing Committee on Governmental Operations

State of New York
March, 1971

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REPORT OF THE ASSEMBLY SUBCOMMITTEE ON INDIAN AFFAIRS

TO THE

STANDING COMMITTEE ON GOVERNMENTAL OPERATIONS

Joseph M. Reilly
Subcommittee Chairman

JOSEPH M. REILLY
7TH DISTRICT
NASSAU COUNTY

THE ASSEMBLY
STATE OF NEW YORK
ALBANY

March 10, 1971

Honorable Frank Walkley
Chairman
Standing Committee on Governmental Operations
New York State Assembly

Dear Mr. Chairman:

The Subcommittee on Indian Affairs created during the 1970 Legislative Session to review the State's Indian Law and State services provided to Indian reservations, hereby submits its report.

The report contains a summary of the Subcommittee's activities during the past ten months together with a statement of the problems brought to its attention. Recommendations for both legislative and administrative action are also contained in the report.

As Chairman of the Subcommittee, I express my sincerest appreciation to you and Mr. Lisa as members of the Subcommittee for your interest and active participation in the Subcommittee.

Respectfully submitted,

Joseph M. Reilly
Chairman
Subcommittee on Indian Affairs

jmr/ds
enc.

REPORT OF THE ASSEMBLY SUBCOMMITTEE ON INDIAN AFFAIRS

TO THE

STANDING COMMITTEE ON GOVERNMENTAL OPERATIONS

Members

Joseph Reilly, Chairman

Frank Walkley

Joseph Lisa

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Gloria Lasher, Secretary
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PREFACE

It is customary in commencing any report or analysis of the Indian in America to speak of his "plight" and to recite a history of the white man's ruthless treatment of "America's"first citizen". It is often the case, however, that after the recitation, little is done to alleviate inequities or injustices. History records the white man's interest in the Indian first in political terms, then in economic terms and today in social terms. After reviewing that history, few will argue that the Indian has not been abused.

The early immigrants to the New World contracted alliances with the Indian nations as assurance that the Indian would be friendly or neutral in the event of a conflict between the white men. From the post Revolutionary period into the 20th century the white man's concern for the red man had an economic basis -- the white man needed to expand his land holdings and the Indian's fate was destined by possession of that land. In the course of events the white man and the Indian consummated agreements in the form of treaties. The tragedy of American Indian history rests in the white man's almost casual dismissal of these treaties whenever political or economic expediency was served.

Today non-Indian society has taken a social interest in the Indian. Contemporary social conscience has prompted the nation to bestow upon the American Indian the title of "minority group." Studies are performed, programs are proposed, money is allocated, intellectual discussions take place, and the "minority group" rides an ephemeral wave of popular public sentiment. The truly tragic facet of this rests in the fact that the American Indian has no other recourse. He has no political base. Neither does he have great numbers nor sufficient finances to assist him in seeking relief for his grievances.

To assimilate into the white society is to abandon a culture and heritage which is yet to be fully understood by the Indian himself, let along the anthropologist. The Indian in many ways is taught that he has been abused and duped. There are Indians who delight in perpetuating a group masochism among their own people precisely on this premise. Their concern is with the problem, not the solution.

The problem, however, must be examined. Action must be taken, with a respect for history, to determine responsibilities and to recognize rights and obligations. This, in part, is what the Assembly Subcommittee on Indian Affairs hopes to do.

The history of legislative involvement in New York State Indian affairs, begun 100 years ago, has not until recent years become effective. Since 1855 there have been sporadic, but frequent, studies and investigations of the "Indian problem." These include the 1855 special commission to study problems of Indian administration, the 1888 special Assembly committee to investigate land claims as well as social, moral and industrial conditions of Indian tribes in the State, the 1905 committee to investigate the extent of State control over Indian Affairs and property, the 1919-1922 ill-fated Everett Commission to discover and report to the Legislature the status of the American Indian residing in New York State, the 1930 report requested by the Assembly and Senate regarding services provided to the reservations by the departments of Education, Health, Law, Social Welfare and Mental Hygiene, and the 1943-1964 Joint Legislative Committee on Indian Affairs. Still serious problems confronting the Indian in New York State have not been resolved.

This report does **not** provide all the answers to these unresolved problems; it may, however, set up processes to reach solutions. Since its inception the Assembly Subcommittee on Indian Affairs has attempted to speak honestly in dialogue with the Indian nations, tribes and bands. In this manner problems can be identified and possible solutions explored. It is a long tedious process demanding patience and conscientious effort on the part of the State and the Indian communities. It is a process in which progress cannot be measured in terms of the numbers of "Indian bills" introduced on the State and Federal level. More realistically, progress should be measured in terms of effective solutions employed and communication and interaction established. Problems such as health, education and housing must receive attention and increased emphasis during the forthcoming sessions of the Legislature.

The primary responsibility of the Assembly Subcommittee on Indian Affairs is the review of the State's Indian Law. The Law, if it is to be a meaningful, progressive instrument for Indian self-determination, must be carefully reviewed. The Indian believes that many times in the past, government has

directly legislated Indian affairs without consulting the Indian community. Such activity was probably more than accidental. In 1888 the special committee appointed by the Assembly to investigate the "Indian Problem" of the State concluded:

> "Their [New York State Indians'] rights should be protected and preserved with the most exact justice, but whenever any conditions of existing treaties stand in the way of their welfare and progress, such conditions should be set aside: neither should the State or nation be longer embarrassed by the refusal of the Indian to receive what is for his own good. Plainly and bluntly, his consent to any measures manifestly and clearly tending to benefit and improve him should no longer be asked."

The review and recodification of the Indian Law will not be done in one year. It is too complex a law, and demands considerable historical review. Drafting a complete recodification after only one year of study would suggest that the Subcommittee understands all the problems and needs of the Indian in New York. That is an impossible posture. After a year's study the Subcommittee is only beginning to demonstrate that it merits the trust and confidence of the Indian people. In this brief time the Subcommittee has attempted to identify what appear to be the most obvious and pressing problem areas and to determine proper avenues of relief.

This report contains many recommendations for administrative actions. It is extremely important that such recommendations be effectuated, especially where communications between State agencies and the Indian community have deteriorated. Where recommendations have been made which demand legislative remedy, it is equally important that positive action be taken.

INTRODUCTION

During the 1970 legislative session, a Subcommittee on Indian Affairs was created within the Assembly Standing Committee on Governmental Operations, chaired by John Terry, to review the State's Indian Law (Chapter 26 of the Consolidated Laws). This Law was last reviewed in 1909 and has been since amended in piecemeal fashion. The Subcommittee was also asked to review the services provided to the reservations by State agencies. Members of the Subcommittee are: Assemblymen Joseph M. Reilly, Chairman; Frank Walkley; and Joseph Lisa.

It was the consensus of the Subcommittee that any meaningful review of the Indian Law should include the opinions, suggestions and criticisms of the on-reservation Indian community. The Subcommittee held seven hearings on reservations in order to meet this objective.

Schedule of Assembly Subcommittee on Indian Affairs Hearings Held on Indian Reservations

Date	Day	Time	Location of Hearing
July 23	Thursday	7:00 P.M.	Cattaraugus Reservation (Gowanda)
August 14	Friday	7:00 P.M.	Tuscarora Reservation (Buffalo)
August 15	Saturday	10:30 A.M.	Tonawanda Reservation (Buffalo)
Sept. 1	Tuesday	7:00 P.M.	Onondaga Reservation (Syracuse)
Sept. 19	Saturday	10:30 A.M.	St. Regis Reservation (Massena)
October 6	Tuesday	7:00 P.M.	Shinnecock Reservation (Long Island)
October 7	Wednesday	7:00 P.M.	Poospatuck Reservation (Long Island)

The seven hearings were held either in the evening or on weekends to assure maximum Indian participation. They were conducted in an informal manner, much like a town meeting. The members of the Subcommittee also availed themselves of the opportunity to tour the reservations and thus see first hand many of the problems brought to their attention during the hearings.

On October 14th and 15th two additional hearings were held in Albany in order to clarify problems concerning on-reservation housing, the possession of wampum belts by the University of the State of New York and the adequacy of services provided by State agencies.

On November 18th a special hearing was held in Syracuse at the request of Mr. Jacob Thompson, President of the Oneida Nation of New York. The purpose was primarily to explore circumstances surrounding extensive land claims made by the Oneidas. The nation's claims include aboriginal title to 32 acres of tax-free land in Oneida, New York which apparently does not have reservation status.

Prior to each hearing a staff member of the Subcommittee visited each reservation and met with members and leaders of the nations or tribes. In this manner preliminary contact was made with the reservation community and the scope of problem areas was defined.

GENERAL BACKGROUND

New York State has an Indian population estimated at 15,000 to 20,000. Approximately 10,400 of these Indians reside on about 78,000 acres of reservation lands. There does not appear to be an accurate accounting of the State's Indian population. Indian population, as determined by the United States Census Bureau, is not totally reliable, due in part to incomplete returns from the reservations and misinterpretation of pertinent questions on the questionnaire. In terms of state Indian population, figures from the Bureau of Indian Affairs indicate that New York State ranks tenth in the United States.

The New York State Indians are unique in their relationship with the Federal government. New York State existed before the establishment of the Federal government, and unlike many other states, never ceded any of its territory to the national government. Thus, its Indian lands were never Federal property. This historical fact, coupled with the State's policy of dealing directly with its Indian population since colonial times, has generally precluded Federal involvement in New York Indian affairs. The responsibilities assumed by the State include welfare, health, and education. Jurisdiction over all criminal offenses and civil disputes arising on Indian reservations was granted by the Federal government in 1948 and 1950 respectively. The responsibilities assumed by the State for its Indians' welfare correspond to the responsibilities undertaken by the Federal government in States west of the Mississippi River.

It should be noted, however, that the most recent Federal-New York Indian involvement occurred in 1964 when $15,000,000 ($3 million for loss of land, $12 million for a program of rehabilitation) was provided to the Seneca Nation of Indians for the taking of 10,000 acres from the Allegany reservation for construction of the Kinzua Dam. A bureau of Indian Affairs office was established in Salamanca to assist in the administration of the

rehabilitation program. The office, established to carry out the provisions of Public Law 88-533, act of August 31, 1964 (78 Stat. 738), serves as the Bureau's principal liaison office with the Seneca Tribe, the tribal attorney, New York State, county and city officials, business organizations and Federal agencies.

In addition to the liaison functions, the Bureau office provides technical assistance to the Seneca Tribe with respect to studies and surveys on the use and conservation of forest lands, wildlife and water. In a technical and advisory capacity, the Bureau office assists the Tribe in obtaining assistance for industrial and recreational development, community development, housing, employment and other services with the ultimate objective of improving the economic, social and educational conditions of enrolled members of the Seneca Nation.

The State has assumed the responsibility of providing most governmental services to the New York State Indian. Agencies most directly involved in providing these services are:

Department of Commerce
Environmental Conservation Department
Education Department
Department of Health
Department of Mental Hygiene
Department of Transportation
Department of Social Services
Division of State Police

They are represented on an Interdepartmental Committee on Indian Affairs, chaired by John R. Hathorn, Director of Indian Services. The Committee meets annually and may convene on its own initiative. The Director is appointed and serves at the pleasure of the Governor. Organizationally the Director's office is is located in the Department of Social Services.

The Indian Law contains most provisions affecting the Indian and his lands. It is generally referred to by the tribal members as the "Black Book." At least 85 additional sections of law in other volumes are alsc concerned with Indians and Indian lands.

THE NATIONS AND TRIBES

There are eight Indian nations, tribes or bands residing on nine reservations in New York State. The Indians on the seven reservations of central, western and northern New York are members of the Six Nations of the Iroquois League. The Iroquois League (or Confederacy, also known as the Ho-de-No-Sau-Nee) consists of the following nations: Cayuga, Oneida, Onondaga, St. Regis, Mohawk, Seneca and Tuscarora. The Tuscarora nation, which came from North Carolina in the 18th century, is the only member of the League not indigenous to New York State.

The Shinnecock and Poospatuck tribes, presumably of Algonquin Indian origin, reside on separate Long Island reservations granted to them by the colonial government in the name of the King of England. Although the State recognizes the Shinnecock and Poospatuck as Indians and their lands as reservations, the Federal Bureau of Indian Affairs (B.I.A.) does not.

Size, Location and Population of the New York State Indian Reservations

Reservation	Size (acres)	Location	Enrolled Membership*
St. Regis	38,390, with 14,640 located in New York and the remainder in Canada.	South bank of St. Lawrence River at Hogansburg, N.Y.; between Massena and Malone on Rt. 37; Franklin County	2,268 St. Regis Mohawks
Tuscarora	5,700	9 miles northeast of Niagara Falls; proximity of Lewiston and Sanborn, N.Y. Niagara County	647 Tuscarora
Cattaraugus	21,680	Northwest of Gowanda and south of Irving on Rt. 5; Rt. 438 passes through the reservation; Cattaraugus, Chautagua and Erie Counties	Approximately 2,000 Senecas; 303 Cayugas
Allegany	22,000	Both side of the Allegany River for a distance of 40 miles from the Pennsylvania boundary, Cattaraugus County	2,379 Seneca
Oil Spring	640	Shore of Cuba Lake, Cattaraugus County	Not inhabited
Tonawanda	7,549	Near Batavia; Rt. 267 from Akron passes through the reservation; Erie Genesee and Niagara Counties	824 Tonawanda Seneca

Reservation	Size (acres)	Location	Enrolled Membership
Onondaga	7,300	Six miles south of Syracuse on Rt. 11 A. near Nedrow; Onondaga County	1,132; 469 Oneidas and mohawks reside on the reservation
Shinnecock	400	Eastern Long Island	300 non-enrolled members
Poospatuck	60	Eastern Long Island at Mastic; Suffolk County	75 non-enrolled members

*An individual whose name appears on a tribal roll is considered to be an enrolled member of a tribe. The principal criterion for enrollment in the Six Nation tribes is generally the tribal affiliation of the mother with the exception of the St. Regis who consider the paternal lineage as dominant. Enrolled members share in annuities and other benefits which are the products of treaties. The Shinnecock and Poospatuck tribes do not have tribal rolls.

Note: The Oneida Nation claims aboriginal title to 32 acres of land at Oneida, New York. Members of the Oneida Nation are gradually taking residence there.

PROBLEMS AND RECOMMENDATIONS

The problems of the Indian people which were brought to the attention of the Subcommittee generally fall within several broad categories, namely: communication, jurisdiction, administration, housing, hunting and fishing rights, factionalism, cultural preservation, taxation, and land rights. Each of these subjects is discussed and recommendations presented in the balance of this report.

A. COMMUNICATION

Perhaps the most pervasive problem in State Indian affairs is the lack of communication between State agencies and the Indian community. It has become apparent that the Indians are not completely aware of many of the benefits and services provided to them. There were many times during 1970, for example, when the Subcommittee and its staff were the first to inform individuals that if they were reservation residents and desired to attend an accredited post-secondary school

within the State, they were eligible for a $1,100 grant for each year up to four years. At one reservation, a tribal spokesman taking the Subcommittee on a tour of the reservation discovered a State financed dental clinic in operation. He was unaware that such a program existed on his reservation. It was not uncommon to discover that tribal leaders had not seen the Indian Law or that they did not have a supplement updating their volume.

1. **Agency Communication**

State departments providing services to the reservations rarely initiate action for communication with the tribal leaders. There is evidence that such lack of communication creates animosity and apprehension, particularly toward those agencies engaged in law enforcement. On all reservations there is confusion in the minds of the Indian regarding the jurisdiction of conservation officers and the applicability of the Conservation Law to reservation lands. There does not appear to have been an attempt on the part of the Conservation Department (predecessor to the Environmental Conservation Department created in 1970) to open avenues of communication with the Indian people regarding this matter. The State Police have established a favorable rapport on a few reservations. In the past four years, however, both agencies failed to include any statement in the Annual Report of the Interdepartmental Committee on Indian Affairs, which is the only official record presented to the Governor concerning services provided to Indian reservations.

Many problems involving housing and education might be alleviated by use of existing Federal and State programs but there is a lack of concerted effort by the State to identify available programs and to present them to tribal officials. With the exception of a visit by a Federal Housing Administration official under the auspices of a Joint Legislative Committee on Indian Affairs in 1963, no attempt has been made to bring Federal Housing Administration, Farmers Home Administration or Veterans Administration officials to the reservations to discuss housing programs available to the Indian community. Due in part to the negative response of such agencies in the past and the Indian fear of losing reservation lands, the on-reservation Indian is generally reluctant to seek out these agencies and to establish qualification for their programs.

2. Legislative Communication

Indians have told the Subcommittee that bills affecting them often become law without their awareness or consultation. It is their express desire to be consulted about such matters prior to legislative action.

3. Recommendations

It is imperative that open and honest communication be initiated between the Indian tribes and the State. Indians need access to government to express their needs and to discover what resources are available. The Subcommittee on Indian Affairs has attempted to establish a basis of trust upon which communication can begin. The Indian tends to be suspicious of any governmental aid to assist him in helping himself. It should be noted that there is a hesitancy among certain groups of Indians to engage in the white man's political world. Often groups of Indians will refuse to vote for fear of partaking in the white man's world and thereby, in their minds, jeopardizing the status of the reservation land. This deep, overriding suspicion of termination of the reservation is a difficult obstacle to overcome. In order to convince the Indian community of the State's sincerity in desiring open communication it is recommended that:

I. Each house of the Legislature establish, within their appropriate standing committees, a permanent Subcommittee on Indian Affairs in order to provide a body to which the Indian tribes can present their opinions and suggestions regarding legislative action affecting them.

II. Each Subcommittee on Indian Affairs meet periodically (preferably on a joint basis) with the Indian nations in order to open and maintain avenues of trust and communication with the Indian populace.

III. Each Subcommittee on Indian Affairs review all proposed legislation concerning or affecting Indians and their reservation lands and review the opinions of the Indian community concerning such legislation.

IV. State agencies serving the reservations meet regularly on the reservation with tribal officials to discuss programs and services which affect the reservation.

V. All members of the Interdepartmental Committee on Indian Affairs make annual reports on services which they have provided to reservations.

B. JURISDICTION

1. Federal-State

For nearly 200 years confusion has existed regarding State-Federal jurisdiction over New York State Indians and their reservations. Article 1, Section 8 of the U.S. Constitution provides that Congress shall have the power to "regulate Commerce

with foreign Nations and among the several states and with the Indian Tribes."

The relationship of New York State to its Indian population, however complicates the picture. The State has never ceded its Indian lands to the Federal government; furthermore, the State has assumed the responsibility of providing services to the reservations which would otherwise have been provided by the Federal government.

The question of criminal and civil jurisdiction over the reservations also became increasingly unclear throughout the years. Numerous State committees struggled vainly in an attempt to clarify this matter. In 1948 after a four year effort by the Joint Legislative Committee on Indian Affairs (1943-1964), the Federal government formally stated, in law, that New York State has exclusive criminal jurisdiction over all Indian territory in the State (25 U.S.C.A. 232). In 1950, following similar efforts by the JLC, the State was granted jurisdiction over civil actions involving Indians (25 U.S.C.A.233). In addition to giving New York State courts jurisdiction over civil matters, the statute also required the courts to apply those tribal laws and customs which were published. In addition, the statute provided limitations which protected Indian land tax exemptions as well as hunting and fishing rights.

The status of the Indian as a U.S. citizen had been determined nearly three decades earlier in 1924 -- when the Federal government unilaterally made citizens of persons "born in the United States to a member of an Indian...or other aboriginal tribe." (8 U.S.C.A. 1401) In a 1927 court case, Deer v. State of New York, 22 Fed. 2nd 851, the statute was interpreted as conferring New York State citizenship upon an Indian residing on the St. Regis reserve. One year later New York extended the franchise to all reservation Indians (1928 Op. Attorney General, 204). Thus, since 1924 the questions of Federal-State citizenship and Federal-State criminal and civil jurisdiction over Indian reservations have been clarified.

Today, however, the jurisdictional question takes on a new dimension, i.e. the availability of Federal and State resources and the eligibility of the State Indian community to utilize such resources. When, for example, may the Federal government alter or regulate an act or grogram which the State directs toward its Indian population? In what areas can New York State Indians legitimately participate in Bureau of Indian Affairs (BIA) projects? When and under what terms may the BIA involve itself in New York State Indian Affairs? At present, there does not appear to be any clear guidelines to resolve such questions.

2. Local Law Enforcement

A complaint frequently voiced by Indians during Subcommittee hearings concerned local justices of the peace. The Indian community often felt that the justices of the peace disclaimed jurisdiction over matters which, in the Indians' eyes, were clearly under their power. Often these matters concerned trespass, dumping, or hunting and fishing on the reservation by non-Indians. Many Indians also felt that they were discriminated against when brought before a court of law off the reservations.

3. Recommendations

VI. The Subcommittee has had several meetings with the Federal Bureau of Indian Affairs. These meetings should occur more frequently and include Executive branch officials. Through these meetings, the State should be apprised of Federal programs available to the New York Indian and also resolve questions of jurisdiction and Federal involvement. A formal statement of Federal policy regarding New York State Indians should be sought from the Federal government.

VII. The justices of the peace in areas adjacent to Indian reservations should be informed of their jurisdiction concerning Indian affairs. Such a communication should be sent by either a proper official in the judicial branch or by the Attorney General.

VIII. Indian reservations should have their own justices of the peace. A law for this purpose was enacted in 1923, but was repealed by Chapter 132, Laws of 1954. Due to a general question of constitutionality, the law was never implemented. The Joint Legislative Committee on Indian Affairs, in supporting repeal of the 1923 statute, noted that Article VI, Section 17 of the State Constitution provides that justices of town courts be chosen by the electors of the towns. The justices of the peace for the reservations, however, although having the same jurisdiction on their respective reservations as town justices would instead have been appointed by the Governor; thus, the Constitution was evaded.

The Subcommittee believes that the enactment of a constitutionally acceptable version of this law would allow the Indian a greater degree of self-government and a greater role as guardian of his own affairs.

C. ADMINISTRATION

On November 13, 1952, Governor Thomas Dewey created an Interdepartmental Committee on Indian Services. The Committee, currently consisting of representatives from eight state agencies,

was charged with the evaluation, integration and improvement of services provided by State agencies to Indian reservations. It was also assigned the joint responsibility, with the then existent Joint Legislative Committee on Indian Affairs, to recommend necessary changes in the Indian Law. In his statement creating the Interdepartmental Committee, Governor Dewey said:

> In my Annual Message to the Legislature this year, I pointed to the need for closer coordination and renewed emphasis on the quality and sufficiency of the Indian services currently performed by the several departments and agencies of the State Government. There is also need for thorough study and revision of the Indian Law and other applicable statutory provisions in the light of recent developments. To these ends the Interdepartmental Committee on Indian Services will devote its attention. Its task will be to formulate and put into practice a sound permanent pattern for Indian Administration in this State.

The Interdepartmental Committee on Indian Affairs has not achieved these objectives. The Subcommittee and its staff, upon visiting the reservation have witnessed:

1. A lack of communication between the departments and the reservations. There appears to be little, if any, effort on the part of the State agencies to explain State programs and policies as they affect the Indians.

2. A feeling of frustration on the part of Indian leadership when it speaks of State-reservation relationships. This frustration may be one explanation for the Indian's lack of initiative in expressing his grievances.

3. A desire of Indian leadership to have frequent visits to the reservation by the Director of Indian Services and departmental representatives.

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*Currently the Interdepartmental Committee on Indian Affairs consists of representatives from the Commerce Department, Department of Social Services, Environmental Conservation Department, Mental Hygiene Department, Department of Transportation, Education Department, Department of Health and the Division of State Police.

4. A belief that the Director of Indian Affairs does not possess adequate powers to act as advocate with State bureaucracy on Indian grievances.

A review of the Interdepartmental Committee's activities and accomplishments during its 19 years of existence strongly indicates that the interdepartmental committee concept used as an administrative mechanism in the formulation and application of Indian affairs programs, policies and priorities is faulty. An interdepartmental committee is one of the least effective means for administering an on-going program; it should be used to solve particular problems and to coordinate policy decisions. It generally lacks strong leadership, has inadequate staffing, and inhibits initiative by any individual department due to the group decision-making process. A stronger organizational concept is needed to administer this State's Indian Affairs program.

In creating the Interdepartmental Committee on Indian Affairs, Governor Dewey also created the position of Director of Indian Services. The Director provides staff service for the Committee and represents the Committee in its dealings with representatives of the Indian tribes. The entire staffing of the Director's office, however, consists of the Director and his secretary. A part-time Indian Agent for the Onondaga Indian Nation and a full-time Indian social worker, both employed by the Department of Social Services, work in close liaison with him.

In addition to inadequate staffing, the Director's effectiveness is further restricted by the Interdepartmental Committee on Indian Affairs' organizationally inherent lack of initiative and the inadequate coordination of Indian Affairs within certain departments.

The amount of correspondence, paper work and administrative details which the Director must deal with greatly restricts his personal mobility. Throughout the years he has been performing the following functions:

- Coordinator of the Interdepartmental Committee on Indian Affairs
- Information and reference source for individuals concerned with Indian affairs
- Conciliator of problems arising between the Indian reservations and the State
- Editor and publisher of the Annual Report of the Interdepartmental Committee on Indian Affairs.
- Researcher of Federal and State programs applicable to Indians in New York State

- Governor's representative at national and State sponsored programs affecting Indians

- Liaison between Indians and State agencies

Many of these functions could easily be a full-time matter. Although the Director is assisted by a competent Indian social worker within the Department of Social Services, the staff is entirely insufficient. The full-time social worker, for example, must visit, assist and counsel residents on eight reservations spread from Buffalo to Long Island. It is an overwhelming task for one person.

Recommendations

The objectives outlined by Governor Dewey are perhaps more relevant today than they were 18 years ago. To realize these objectives it is necessary to completely reappraise the current administrative structure. A more realistic administrative mechanism could provide the State with an excellent opportunity to assist the Indian in assisting himself. Indian involvement in the administration and formulation of State programs would allow direct input by the Indian into a system which directly affects him. It would afford the Indian the opportunity to review State programs and to see their potential benefit to the reservation and the Indian people.

IX. It is recommended that a Commission on Indian Affairs be legislatively created. The Commission,which would subsume the position of Director of Indian Services should consist of three members appointed by the Governor, one of whom shall be an Indian of New York State. Of the three members, one should be appointed by the Governor as Chairman and should be full-time. The commission members should serve for six year terms staggered at two year intervals.

The purpose of the Commission would be to determine the needs of the Indian population, to ensure that State services due reservations are provided, to inform the Indian community of programs available to them, to evaluate and integrate services provided by governmental agencies to reservations, to recommend changes in the Indian Law and other statutes, to make the Indian community aware of all proposed legislation on the Federal and State levels which would affect them, and to suggest policy and programs beneficial to the Indian people.

The Commission would meet at least quarterly to review services and programs available to the Indian community, to identify problems affecting Indians, to propose legislation,

to suggest programs and policies to the Governor and the Legislature, and to make recommendations on any matter which they consider appropriate.

The Chairman and his staff should also perform the following duties:

1. Research and develop Federal and State grant applications which benefit the Indian community.

2. Communicate regularly with State departments to determine the feasibility of utilizing existing State programs for the Indian community.

3. Seek to resolve administrative conflicts which hinder the full implementation of programs.

4. Act as liaison for the Indian community in matters affecting the Legislature and the Executive branch.

5. Provide information to the public on Indian culture, language and life.

6. Establish and maintain communication with the Indian community by meetings, hearings and publications such as a quarterly newsletter and comprehensive annual report.

7. Meet regularly with the Federal Bureau of Indian Affairs.

In carrying out its functions the Commission must have the right to confer with State officials and other governmental units and to have access to such records as are needed to fulfill the purposes of the Commission.

The Commission might prove most effective if staffed with an assistant to the Chairman and two regional officers. It is suggested that regional officers be full-time employees of Indian descent. Their duties should include: establishing communication on the local level with the tribes or nations and their leadership; communicating information on the programs and benefits to which the Indian people are eligible; assisting the Indian community in obtaining programs and benefits to which they are eligible; bringing to the attention of the Commission problems and issues affecting Indian-State relations and any other duties deemed appropriate by the Commission.

The Commission should make an annual report to the Governor on its activities, its findings and its recommendations, and to the Legislature at each regular session of the Legislature as early in the legislative session as possible.

X. An Indian Advisory Council should be created to assist the Commission in considering problems, programs and legislation relating to Indians and Indian reservations in New York State. Each tribe within the state should choose a member to represent it on the Council. Council members should be invited to all meetings of the commission and be reasonably compensated for expenses of attending.

XI. The Interdepartmental Committee on Indian Affairs should be continued and should represent the following agencies: Commerce Department, Department of Social Services, Environmental Conservation Department, Mental Hygiene Department, Department of Transportation, Education Department, Department of Health, Department of Labor, Division of State Police, Division of Housing, Division for Youth, Office of Planning Coordination, Council on the Arts, Department of Law, Office of Local Government, Office of Community Affairs, Department of Tax and Finance and the Banking Department.

The Interdepartmental Committee should meet at least bi-annually. The Chairman of the Commission, would also serve as Chairman of the Interdepartmental Committee.

The Committee should assist the Commission in its attempt to research existing State programs available to the Indian in New York State. The Committee should also serve the following functions:

1. As a bridge to agencies to open and maintain continuing communication with the Indian people so that they may voice their needs.

2. To evaluate, analyze and improve programs and services provided to the reservations and its Indian community

3. To coordinate and cooperate with other governmental agencies providing services to the Indian community

4. To make recommendations for changes in the Indian Law and other statutes

5. To perform services for the Commission, including establishing institutes, conferences, or seminars on matters affecting the Indian community

Members of the Committee should be the head of each agency or a permanent, high level designee who will provide strong leadership in the agency, rather than pass duties on to subordinates who will pay only passing attention to them.

D. HOUSING

The communal nature of the reservation lands makes the Indian an allottee, entitled only to surface rights for the acreage allotted to him by the proper tribal officials. The reservation resident's ability to obtain financing for home building or substantial home improvement is extremely limited, since he is unable to produce a title for collateral purposes. A mortgage or deed, in the conventional meaning of the terms, is non-existent under the communal ownership concept.

Another impediment is the fact that, by treaty, and under State and Federal law, reservation lands are free from taxation and in many respects inalienable. In the event a mortgage did exist, the inalienable quality of the land would restrict the lender in foreclosure if the borrower defaulted in payment. The only legal course of action would be the selling of the foreclosed property to the tribe or another Indian. If neither of these two parties could finance the property, the lender would be unable to effectively foreclose.

Throughout the hearings and visits at the reservations, the Subcommittee's attention was drawn to the problem of the on-reservation Indian who cannot get assistance from the Federal Housing Administration, Veterans Administration, Farmers Home Administration or commercial lending institutions. Indians are compelled to build in a piecemeal fashion from current income. Driving through New York State Indian reservations one sees homes which are in various stages of construction and disrepair. Such travelers are probably unaware of the economic factors which foster this condition.

Generally, those houses on the reservation which are completed represent a considerable amount of saving and the establishment of a respected credit rating. Young Indians who desire to establish a home on the reservation, although they may be gainfully and securely employed, have not had time to sufficiently establish a financial base or credit rating acceptable to commercial lenders. Many Indians, young and old, have attempted to resolve the problem through the use of mobile homes for which financing can be obtained.

Although there does not appear to be any complete survey of reservation housing, including water supply or plumbing, individual Indians estimate that 50 percent of the houses on the

reservation do not have indoor plumbing.

As is the case in many rural areas, reservation residents must drill wells in order to obtain drinking water. This is generally an expensive and chancy proposition. A Mohawk Chief stated the problem vividly.

> I might add...that the majority of our people cannot get financing for drilled wells, and when they go into 80 to 100 feet, it is up to about $1,000, and that pretty well prevents them...if they are in the low income group, and that is maybe 40 percent...from making anything for a generation of this...we hope to have some inside conveniences, eventually, that most of us have just been able to acquire. It might take ten or twenty years to work to that degree.

The Subcommittee is greatly concerned with the problems the on-reservation Indian faces when he attempts to acquire financing for home building or substantial home improvement. In attempting to find a solution the State Banking Department and Division of Housing, commercial lending institutions and Federal agencies have been contacted. The results of discussions with these sources is not encouraging. It is apparent that governmental agencies and private lending institutions are not eager to create a simple lending procedure which would accommodate the unique status of the reservation and the meager financial resources of the tribes.

Recommendation

XII. It is the Subcommittee's intention to continue in search of a solution by researching several unique approaches to the problem. Prior to the conclusion of this legislative session the Subcommittee intends to issue a report of its findings and recommendations.

E. HUNTING AND FISHING

A problem brought to the Subcommittee's attention at nearly every reservation visited is the enforcement of the State's Conservation Law on reservation lands. All Indians except the Seneca are required by State law to purchase hunting and fishing licenses, observe bag limits and respect seasonal hunting and fishing regulations whether on or off the reservation. Indians believe that it is unreasonable and illegal to apply these State laws to the reservation lands and the Indian. Treaties, they reason, have given them the right to the free use and enjoyment of their land. Their contention is given added weight in 25 U.S.C.A. 232, in which the Federal government granted criminal jurisdiction to New York with the caveat:

> Nothing contained in this section shall be construed to deprive any Indian tribe, band or community or members thereof, hunting and fishing rights as guaranteed them by agreement, treaty or custom nor require them to obtain State fish and game licenses for the exercise of such right.

It is rather ironic that, at the Shinnecock Reservation at Southampton, residents drive daily past a sign at the entrance which reads:

> Indian reservation of 400 acres. The remainder of the tribe is self-governing and retains ancient fishing and hunting rights.
> (State Education Department 1935)

During a hearing at the reservation and in staff visits prior to the hearings, the Shinnecock complained of forced compliance with the Conservation Law and the unfriendly attitude of Conservation Officers when they enter the reservation. The seriousness of the entire problem was also brought out by an Environmental Conservation Department representative in testimony before the Subcommittee. In explaining the viewpoint of the Department, he stated:

> Now, one of the problems, of course, is that the Conservation Officer is frustrated and he doesn't know what way to go, whether to go on the reservation and enforce[the State Conservation Law],and if he does, what is going to happen. We have had a couple of cases where we have asked that they [conservation officers] be dismissed... hoping that it would lead to dialogue, and we could sit down and talk about it. Unfortunately, to this date, it has not. We haven't given up hope, so I think it is a sense of frustration that is causing the lack of dialogue occurring now.

It should be noted that pursuant to an Act of Congress of January 5, 1927 (c. 537; 44 Stat. 932) the Seneca Nation of Indians was given the exclusive right to issue licenses for the taking of game and fish within their reservations. State laws relating to the taking of game and fish were applied to the Seneca reservations by the statute. Problems have arisen, however, in the enforcement of provisions of the State Conservation Law with respect to open seasons, bag limits, purchases, sale, transportation, etc.

Recommendation

To assist in alleviating confusion and misunderstanding which have caused alienation and ill-feeling among the Indian nations and enforcement officers of the Conservation Law, it is recommended that:

XIII. The Attorney General conduct a thorough study of the treaties agreed to between New York and the Indian Nations as well as other documents concerning reservation lands. If such analysis of treaties and documents provides for hunting and fishing rights which differ from State law, then the law should be amended to include these Indian rights. In the interim, however, the following measures are recommended.

a. The Conservation Law be amended to allow Indians to obtain State licenses without charge for hunting, fishing and trapping on non-reservation land.

b. The Conservation Law be amended so that Indians residing on reservations may hunt and fish upon reservation lands without purchasing a State license and that seasonal restrictions, bag limits, and regulations and rules should be established by the appropriate Indian tribe, band or nation.

F. FACTIONALISM

The on-reservation Indian community universally fears termination of their reservations. This fear underlies reluctance to accept Federal and State assistance. The Indian believes that once Federal or State programs or money are brought into the reservation, taxation and eventual possession of the land by the outside government begins. This fear, plus the continuing search for Indian identity and cultural preservation, have contributed greatly to factionalism within reservation communities. The groups involved in the cleavage might be termed the progressives and the traditionalists.

The progressive philosophy approves outside governmental assistance to the reservation, assimilation of those parts of the non-Indian society which can be of benefit to the Indian and the assumption of the rights and obligations which accrue to State and Federal citizenship.

The traditionalist philosophy maintains that an Indian nation is a true nation; that citizenship within that nation is the only citizenship an Indian should hold; that, in general, the white society has little, if anything, to contribute to the Indian; and that there is a grave need for the Indian not only to become aware of his identity but also to immerse himself exclusively in the Indian culture.

These descriptions are generalizations and extreme viewpoints can be found in each. The extreme progressive, for example, would advocate total assimilation into the white society while the extreme traditionalist would advocate total reversion to strict interpretation of treaty rights, disallowing other acts of outside governments. In addition to the "progressives" and the "traditionalists," a sizeable, but much less vocal proportion of the community does not actively advocate either philosophy.

Despite the different viewpoints of the traditionalists and the progressives, they do agree upon two points, namely, fear of termination and respect for Indian cultural identity and awareness. The differences, however, are often deep, and unfortunately result in animosity and division within the community and, in certain instances, lead to acts of violence.

Recommendation

XIV. For any State program to be accepted and successfully utilized by the reservation community, it must engender the basic principles of the Indian community. In order to attain this end, it is recommended that all programs or means of assistance

- preserve the identity of the Indian people;
- respect the unique status of the reservation lands; and
- consider the opinions and comments of the Indian people.

G. CULTURAL PRESERVATION

Assimilation of the Indian into the mainstream of white society has often had the unfortunate consequence of contributing to the deterioration of the Indian culture. Indians, who move from the reservation for economic reasons, often find that economic and social assimilation also compels cultural assimilation. Today, the Indian in New York State is in the midst of sifting his culture from what he considers the adulteration of the white man's influences. Some adult Indians are concerned with the fact that their children cannot speak the Indian language and do not have a clear cultural and ethnic identity. On many reservations a cultural renaissance is occurring. The Longhouse, a traditional meeting place for religious, governmental and familial activity, is regaining acceptance as a citadel in the search for this awareness of identity.

The frustration of the young Indian is compounded by the constant exposure to the stereotype found in school books and the commercial media. There is considerable evidence of a growing polarization between the traditionalist young Indian and white society. This polarization is exacerbated by several factors which were brought to the Subcommittee's attention during its seven reservation hearings:

1. The belief that only the white man's version of Indian culture and history is taught in schools and portrayed on film and television.

2. The concern that the Indian is too often stereotyped in the general media and in school texts as brutal, savage, primitive and ignorant.

3. The belief that the contributions made by the Indian community to society have too often been relegated to a minor footnote in the history of the Indian.

4. The frustration of Indian groups in being unable to persuade schools adjacent to reservations to include comprehensive elective courses in Indian culture, language and history and to acquire significant assistance from the State to teach Indian children about their culture.

5. The conviction that the non-Indian society and government is an antagonist of the Indian, intent upon acquiring Indian land and making little or no attempt to understand the Indian and his culture.

No pretense is made that the general Indian community shares all of the above viewpoints. Nor should it be construed that each of these factors, as stated, is unequivocally valid. What should be stated, however, is that the vast majority of Indians who reside on reservations in the State and who spoke with the Subcommittee and its staff, hold one or more of these viewpoints and express them quite forcefully.

1. Indian efforts toward cultural preservation

The Indian community itself is in many ways attempting to create cultural awareness, not only within the reservation community, but also within the non-Indian society. The St. Regis Mohawks have proposed an ambitious three phase plan for researching and teaching their language, culture and history. They hope to obtain funds from private sources for research, curricular development and teacher training in this area.

The program would emphasize Indian involvement in all phases of research and program implementation. The complexity of the task is evident when it is realized that the Indian language is a spoken language rather than a written one.

The Onondagas had planned during the summer of 1970 to conduct a cultural program on the reservation for their children. Apparently through lack of coordination and communication with the Education Department the program was never fully implemented. The Tuscarora language, however, is being researched with the assistance of the State Education Department. Although the language and culture of the Tonawanda Reservation and the Seneca Nation of Indians are taught in schools adjacent to their reservations, this does not appear to be a general trend for other reservations.

There is difficulty in providing certified teachers with the ability to teach the language, culture and history. Many Indians otherwise qualified are not acceptable because they lack certification.

2. Indian criticisms of the State Museum

The New York State Museum has been criticized by certain elements within the Indian community. The principle complaints received by the Subcommittee were:

-- display of Indian bones at the State museum exhibit on the fifth floor of the State's Education Building (since removed) and similar displays which offend the dignity of Indians at other museums; and

-- possession of culturally valued wampum belts by the University of the State of New York and their display by the museum.

a. Burial Display

While the study of Indian graves and remains is fully recognized as a contribution to understanding Indian culture, public display of these remains appears to have little cultural or historical value. Illustrations of burial customs and excavation methodology could effectively be attained through use of models or synthetic replicas.

In testimony given to the Subcommittee in Albany, it was noted that the burial exhibition then on display in the museum contained the remains of Erie Indians, an extinct people who lived west of the Seneca. A State Museum representative gave assurances that the display of Indian remains would be removed from the State Museum and shortly thereafter, it is.

The Museum recently sought to open communication with the Indian by requesting the creation of a full-time position of "Specialist in Indian Culture," who will report directly to the Assistant Commissioner for the State Museum and Science Service. A St. Regis Mohawk was recently appointed to this position. His duties and responsibilities include:

-- Providing liaison with New York Indian communities and assisting in the development of museum-related programs dealing with Indian culture and tradition.

-- Assisting in curating the Museum's Indian collections and helping arrange for appropriate loans and exhibits of Museum materials to Indian communities or to other museums for purposes of study and/or exhibition.

-- Preparing and scheduling talks on contemporary Indian culture for groups of interested adults; advising Museum Instructors on present-day Indian affairs; and arranging seminars and workshops on Indian arts and crafts.

During the 1970 session of the State Legislature, the position of the University of the State of New York (Education Department) as "duly elected"wampum keepers was challenged by several Indian groups. Legislation introduced on behalf of the Indians for return of wampum to the Onondaga Nation (A 6326) passed unanimously in the Assembly but died in the Senate Finance Committee.

Section 27 of the State's Indian Law documents the 1898 transfer of wampum to the State and the title of the University of the State of New York as wampum keeper:

> §27 Custody of wampums. The University of the State of New York, which was duly elected to the office of wampum-keeper by the Onondaga nation on February twenty-sixth, eighteen hundred and ninety-eight, and which by unanimous action of its Regents on March twenty-second eighteen hundred and ninety-eight, accepted such election as authorized to do by law, and which accepted the custody of the wampums as formally transferred to the Chancellor as part of the exercises and with the unanimous approval, both of the election and transfer, by the council of the Five Nations held in the senate chamber of the capitol at Albany on June twenty-second eighteen hundred and ninety-eight, by duly chosen representatives of all the original nations of the Ho-de-no-sau-nee, shall hereafter be recognized

in all courts and places, as having every power which has ever, at any time, been exercised by any wampum-keeper of the Onondaga nation, or of any of the Ho-de-no-sau-nee, otherwise known as the Five Nations, or the Six Nations, or the Iroquois, and shall keep such wampums in a fire-proof building, as public records, forever, and is hereby authorized to secure by purchase, suit, or otherwise, any wampums which have ever been in the possession of any of the Ho-de-no-sau-nee, or any preceding wampum-keeper, and which are now owned by any of them or to which any of them is entitled, or to which it is entitled, in law or in equity, and to maintain and carry on suit to recover any of such wampums in its own name or in the name of the Onondaga nation at any time notwithstanding that the cause of action may have accrued more than six years, or any time, before the commencement of any such suit.

The provisions of this section shall not apply to the subject matter of any litigation pending on March twenty-seventh, eighteen hundred and ninety-nine, in any court of this State.

The Indian groups demanding return of the wampum belts to the Onondaga argue that:

1. the 1898 accord was not legitimate because those who participated in the transfer had no power to do so;

2. the wampum belts are essential to the Indian in his culture, tradition and religion; and

3. the Indian is the only one who can read these symbolic documents which tell of laws, alliances and the early history of the Indian.

Officials at the State Museum contest the Indian claims by arguing that:

1. historical research of newspaper accounts and the original documents of transfer indicate that the ceremonial transfer of five belts by 50 leading Iroquois chiefs and sachems in 1898 was legitimate;

2. the State Museum has carefully protected and preserved the wampum belts and if these artifacts are to be handled, they would gradually disintegrate;

3. the wampum belts are cultural artifacts which should be available to all the people of New York State;

4. the collection of wampum as it currently exists is the best in quality and quantity anywhere in the world and is worth approximately $250,000;

5. the belts are not necessarily linked to the Longhouse religion which exists on many of the State's reservations nor is any Indian or white man able to read the belts;

6. the Indian has never been deprived of an opportunity to view the belts;

7. the museum collection, except for one belt made for it in 1850, was acquired from 1898 to 1949 through legal transfer and sale by Indians, gifts, wills and purchase (in certain instances court action could be brought against the museum if wampum belts were to leave its guardianship); and

8. if the wampum belts were given to the Indians it would draw into question the entire philosophy of the museum as a collector and guardian of cultural artifacts.

Several Indian spokesman, representing both the traditional and progressive viewpoints, have told the Subcommittee that they desire to see the wampum placed in the Indian community under Indian care, but only if proper measures are taken for its preservation.

3. Recommendations

XV. A great many of the matters affecting the success of the cultural preservation movement among the Indians are within the jurisdiction of the State Education Department. Other State agencies able to assist in this area are the Commerce Department in the marketing of Indian arts and crafts and the Council on the Arts by subsidizing Indian arts and crafts programs. It is recommended that each of these agencies contact the reservation communities and inform them of the resources available to them. (Further attention is given to the Commerce Department later in this report.)

XVI. The Education Department is urged to actively support a policy of encouraging local school districts to initiate elective courses in Indian culture, language and history.

Particular emphasis should be placed upon those school districts adjacent to reservations. Often in areas close to the reservations there exists the greatest need for closer awareness of the Indian culture, and closer communication between Indian and non-Indian. The State Education Department has, in recent years, provided an excellent basis for the study of Iroquois culture at the secondary level by creating a new curriculum for the teaching of seventh grade social studies, entitled "A Pre-Columbian Culture: the Iroquois."

XVII. A more practical and realistic approach is necessary in reviewing certification qualifications for teachers of Indian culture, language and history. Special permanent certification or waiver of certification, could be granted to individuals having the expertise, but not necessarily the proper academic credentials to teach such subject matter.

XVIII. The Education Department could be of greater assistance in encouraging and assisting the reservations in conducting symposiums and institutes on Indian culture, history, language and traditions. Summer programs allowing adults the opportunity to exchange knowledge concerning traditions, rituals and dances could also be sponsored. The study of Indian culture, language and history could be encouraged by providing incentive scolarships and research grants with primary consideration given to Indian applicants.

XIX. The Education Department should state a formal policy regarding balanced portrayal of the Indian in school texts and such policy should also contain suggested general guidelines to assist in determining adequate and objective treatment of the Indian in school texts.

The choice of texts to be used in schools is not an Education Department function. As Indian representation on school boards increases,it is anticipated that they will exercise a more effective voice in matters of text selection.

XX. The exhibition of Indian remains in all museums in the State should be discontinued.

The State Museum, at the request of the Subcommittee, has removed its Indian burial exhibit from display. Other museums across the State should similarly remove any exhibits of Indian remains.

By requesting the position of "Specialist in Indian Culture" and employing an Indian in that position, the State Museum has shown a serious concern in expanding its program on Indian culture. It is hoped that the position will afford the museum and the Indian community an opportunity for a

greater appreciation of each other's viewpoints. The effectiveness of this position depends not only upon the qualifications of the individual but also upon the flexibility of his role.

XXI. The Subcommittee recommends that those wampums transferred to the University of the State of New York on June 29, 1898 by the chiefs and sachems of the Onondaga nation be returned to the Onondaga Nation following the construction of a museum by the Nation which would ensure the wampums' preservation. Procedures should also be established whereby the wampums' perpetual preservation is ensured. The wampum would have to be made available on a regular basis for viewing by the public.

The colorful nature of the Indians' attempts to gain repossession of the wampum has often caused oversimplification of the entire issue. The belts are historically valuable and fragile artifacts. To jeopardize their preservation by removal from their controlled environment would be a most regrettable tragedy. Their preservation must be given first consideration. This, however, does not preclude return of the belts to the Indian community. Such an act would in the Subcommittee's opinion, greatly assist the Indian in his cultural and historical awareness.

The Onondaga have stated their intention to construct an Onondaga Nation Cultural Center and Museum on the reservation and to hire personnel trained to operate the facility. They have also expressed a desire for the advice of the State Museum in regard to the construction and operation of their museum.

H. TAXATION

Pursuant to Section 6 of the State's Indian Law, no taxes may be assessed for any purpose whatever upon any Indian reservation in the State, so long as the land remains the property of the occupying nation, tribe or band. Section 490 of the State's Real Property Tax Law provides that the real property on any reservation owned by the Indian nation, tribe or band occupying it is exempt from special ad valorem levies and special assessments.

The subject of taxation as it concerns the reservation and the New York State Indian has continuously been brought to the Subcommittee's attention at the upstate reservation. Some Indians argue that Article XIV, Section 2 of the United States Constitution provides exemption from all taxation for the Indian. The section reads, in part, that "Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed."

The problems and issues of taxation can generally be categorized as follows:

1. New York State Sales Tax

The Counsel to the New York State Department of Taxation and Finance has held that since State law does not explicitly exclude Indians from sales and income taxes they, therefore, must pay these taxes.

A common point of contention arises when an Indian purchases an item off the reservation and has it delivered to the reservation. Under such a transaction he is compelled to pay a sales tax on the purchase. A clear legislative statement of the applicability of such tax in this circumstance does not appear to exist. Certain Indians still refuse to pay the sales tax upon such a purchase.

The Counsel to the Taxation and Finance Department has also issued opinions upholding the taxability of sales which take place on Indian reservations. Indians, however, view this as a misinterpretation of the reservations' exemption from taxation.

In 1968, the State Appellate Division, Fourth Department held that the sale of Indian artifacts which are made and sold by Indians on the reservation are exempt from the New York State sales tax (Pierce v. State Tax Commissioner, 29 AD 2nd 124). The Tax and Finance Department believes that this decision has been interpreted by the Indians to encompass a much larger area of sales tax exemption than was intended by the court. They have filed a notice of appeal to the Court of Appeals.

In addition to the question of his taxability,there is confusion in the Indian's mind concerning the benefits he receives from the payment of a sales tax. Essentially, the question is "does any portion of the sales tax find its way to the reservation in terms of revenue or services?" Many Indians feel that it does not.

2. New York State Income Tax

The Attorney General of New York State first held Indians liable for State income tax in a 1943 opinion (Op. Atty Gen. 410). Court cases in subsequent years have affirmed this (State Tax Commissioner v. Barnes, 1958, 14 Misc 2nd 311, 178 NYS 2nd 932 and Powless v. State Tax Commissioner 253 NYS 2nd 438, Aff'd 16 N 2nd 946). Certain Indians, however,still question the state's right to impose the State income tax on wages earned exclusively within the reservation.

3. Franchise and Utility Taxes

Railroad corporations, under Section 19 of the State Railroad Law, as well as gas, electric and pipeline corporations under Sections 17 and 88 of the State Transportation Corporation Law are permitted to contract with the chiefs of any nation for construction of facilities on reservation land. Specific provisions are made for protection of Indian title to the land and for ratification of the contract by the county court.

There is a belief among many Indians that outside governmental units extract revenue from the reservations in the form of franchise or utility taxes imposed upon these facilities. The Indians' contention is that such revenue should revert to the reservation. Specific claims in this area are unclear but sentiment on this subject runs high.

4. Recommendation

XXII. The proposed Commission on Indian Affairs with the assistance of the Department of Taxation and Finance and the Department of Law should research and report upon the full scope of Indian tax obligations. A report with specific recommendations should be submitted to the Governor and the Legislature.

The taxation of the Indians and their property is recognized as a serious and complex problem. The Department of Taxation and Finance, through its counsel, has confirmed that it is looking for an external resolution of the issue. If the problem is to be intelligently dealt with, therefore, clear and unequivocal legislation must be enacted. Such legislation must be the product of meticulous research. The current section 6 (exemption of reservation lands from taxation) in the State Indian Law must be clarified with regard to income and sales taxes. Consideration must also be given to Title 25 U.S.C.A. 233, which provides that lands within Indian reservations are not subject to State or local taxation, and "that such lands, together with Federal and State annuities shall not be subject to an execution on any judgment except one as between tribal members as to the use or possession of land." Subcommittee hearings elicited the following questions appropriate for study:

1. inclusion or exclusion of articles or utilities from taxation if delivered to the reservation;

2. taxability of goods sold between Indian residents on the reservation;

3. taxable status of the wages of persons employed exclusively on the reservation lands as well as the taxable status of the Indian working off-reservation;

4. possibility of allowing the tribal governments tax-free privileges in purchasing items and materials for the nation as a whole;

5. applicability of tax exemption concepts applied to churches and non-profit organizations;

6. extent of revenues generated on reservation lands and used by governmental entities other than the reservation itself;

7. extent of tax-free benefits to the reservations and services provided without taxation of tribal members.

8. possibility of paying state aid to reservations as is now done for cities, towns and villages.

I. ONEIDA LAND CLAIMS

The Oneida nation of New York has two distinct land problems which it has brought to the attention of the Subcommittee on Indian Affairs. For several years the Oneida nation has sought relief from the Federal and State governments for extensive land losses which it attributes to illegal treaties and inadequate compensation. The Oneida are also concerned about the status of a 32 acre tract of tax-free land to which they claim aboriginal title. The land, located in a section of the City of Oneida known as West Road, is not considered a reservation by New York.

On November 18th, 1970, the Subcommittee conducted a hearing in Syracuse to explore both problems.

1. Land Claims against the State

Mr. George C. Shattuck of the law firm Bond, Schoeneck and King, attorney for the Oneida Nation, appeared before the Subcommittee and summarized the Oneida land claims as follows:

> The subject of this claim is the Reservation of some 3,000,000 acres that was set out by agreements between the Oneida Indian Nation and the State of New York, and later guaranteed by treaties and laws of the United States.
>
> This Reservation, except for two small parcels, was acquired by the State over a period of 50 years (1795-1845) in a series of transactions called"treaties." In all but two such treaties, the Indians were not represented by the United States--as was and is required by Federal Law.

The Oneida's claim has these three elements:

> FIRST: The so-called "treaties" with the State were and are void under Federal law and did not operate to transfer true title to the land.
>
> SECOND: The price paid for the land was unfair and fraudulent based on then land values.
>
> THIRD: The Indians were illiterate and did not understand what they were doing or signing.

The State courts have not been available to the Oneida Indians because of neglect on the part of their guardian, the United States.

Thus the stain on the honor of New York State remains. It has cheated and repudiated its friends and former allies. It has taken their land in violation of the Constitution, Laws and Treaties of the United States.

> The State should hear the claims of the Oneida Indians and let them, at last, be adjudicated.

Until the 1970 public hearing, the Oneida had never formally presented a petition to the Legislature of New York State. In 1967 they petitioned the Governor and the 1967 Constitutional Convention for redress. In answer to their petition the Governor referred the Oneida to the Constitutional Convention as the proper avenue of appeal for their cause. The Convention's Committee on Health, Housing and Social Services Subcommittee on Consumer Protection and Indian Affairs, however, questioned the necessity of a constitutional remedy to the Oneida problem stating in their report that "the Oneida Indians presently have a similar claim pending against the Indian Claims Commission and no reason appears why they should not be able to prosecute this claim to a conclusion without any provision in the New York State Constitution." (The Subcommittee eventually chose not to submit a single proposition to the convention with regard to Indian affairs.)

The Oneida have not pressed any further claims on the State. According to their attorney they have initiated a court action against Oneida and Madison counties which is currently pending in Federal Court. The form of redress which they have sought from the State in the past and continue to seek today is access to the State Court of Claims in order to initiate suit against the State.

Following the negative response of the Constitutional Convention, the President of the Oneida Nation of New York petitioned the President of the United States to assist in proceeding against the State of New York for redress of their injuries. The justification for such a petition was based upon Articles 2 and 7 of a treaty dated November 11, 1794 between the United States and the Iroquois Nation, providing for the security of Oneida lands and providing that complaints for injury be made to the President of the United States. The petition was denied by the President in 1967.

In addition to actions against Oneida and Madison counties for land recovery, the Oneida Nation of New York has also placed their land claim issue before the Federal Indian Claims Commission (Docket 301). The Commission has acknowledged the legitimacy of the claims against the Federal government and is currently considering settlement of the claim. It is important to note that the factual background of the claims against the United States are much the same as those claims against New York.

2. Status of 32 acre tract

While most members of the Oneida Nation residing on reservations live on the Onondaga Reservation, approximately six Oneida families live on the 32 acre tract in the City of Oneida. Although the nation claims aborginal title to this 32 acre tract as well as patches of land on a section of Oneida called Marble Hill, the land has not been accepted as a reservation by State agencies.

The fact that the land is not a reservation, yet enjoys tax-free status, presents a unique problem. Reservations, by State and Federal statute, are not subject to school taxes. In the case of a reservation, the State provides the tuition rate for Indians attending neighboring school districts, thus relieving the school district taxpayer of the burden of supporting the reservation Indian student. The State does not provide payment for children from the Oneida lands, so the school district taxpayer assumes the cost.

The Education Department also requires reservation residence for the $1,100 post-secondary school grant for Indian students. Thus, an Oneida youth living on the Wolf Road or Marble Hill properties would be ineligible.

3. Recommendations

XXIII. <u>On the basis of testimony given at the Subcommittee's hearing on this issue the Oneida Nation of Indians appear to merit an opportunity to have their land claims heard and justly determined. The State should,however, offer no redress until the conclusion of the proceedings before the Indian Claims Commission</u>.

Several difficulties accompany any consideration of enacting legislation on the Oneida claim and it is important to be aware of them when, and if, the time comes to grant the Oneidas the right to pursue their claim against the State.

a. Possibility of double recovery. The Oneidas are presently asserting claims against both the Federal government and the State on basically the same issue. If awards were granted by both levels of government on the same issue, a double recovery would occur.

b. Determination of interest to be awarded. There is an extremely limited amount of decisional law on this point. If that portion of the Oneida claim contesting the sale of 4,300,000 acres was found to have merit it could yield a principal sum of between one-half and three million dollars. This estimate is based upon an evaluation of $.125 to $.75 per acre, the estimated value at the time the land changed hands. The amount would depend on the proof adduced at the trial. Interest is a substantial factor; a four percent rate of interest would increase the principal sum, exclusive of compounding, approximately sevenfold. It is possible, however, that the rate of interest to be awarded, if any, could be specified in the enabling legislation.

c. Distribution of any possible award. Over 90 percent of the members of the Oneida Nation now reside in Wisconsin and Canada. The President of the Oneida Indian Nation of New York and his counsel have stated that the out-of-state portion of the tribe should share in any award. The President has also expressed a desire to use any award to acquire additional lands for the Oneida people and to finance reservation housing, agriculture and industry as well as meeting educational and cultural needs of the Oneida.

XXIV. <u>That portion of land consisting of 32 acres in the City of Oneida and the pieces of property on Marble Hill to which the Oneida Indian Nation of New York have aboriginal title should be entitled to those education benefits which accrue to the nine recognized State Indian reservations</u>.

The reasons for the State's failure to recognize this Oneida land as reservation land is not entirely clear. The action appears to be an administrative determination on the part of State agencies rather than interpretation of a judicial or legislative statement on the matter. Indeed, judicial treatment of the subject provides greater basis for concluding that such land is a reservation than concluding to the contrary. (See U.S. v. Boylan et. al 256F 498 (1919), Waterman v. Mayor, City of Oneida, 53 Misc. 2d 1078 (1967)).

There is a need for positive action to clarify this problem and to provide a remedy to school districts enrolling Indian students from the Oneida lands. The Education Department through administrative determination can provide these benefits and is urged to do so.

STATE SERVICES

The Subcommittee, in the course of its on reservation hearings, elicited comments from the Indians regarding the adequacy of services provided by State departments. The comments and criticisms by the Indian community and the testimony of State agencies in several instances have indicated to the Subcommittee that a comprehensive review should be made by departments providing services to the reservations. At other times it appears that dialogue and communication would be sufficient to uplift the quality of services. The Subcommittee has made recommendations accordingly. The following pages are addressed to specific State services.

It is the recommendation of the Subcommittee that departmental services be coordinated by the proposed Commission on Indian Affairs and that the implementation of the recommendations in this report be through the coordination of the Commission. In this manner state level policy and internal operational change within agencies can be best coordinated.

A. EDUCATION DEPARTMENT

The State's active involvement in Indian education commenced in 1846 when statutory provision was made for school buildings and supportive funding for schools on four reservations. Ten years later Indian schools were placed under the direct charge of the first superintendent of public instruction.

Today there are no fewer than 27 separate sections in the Education Law pertaining to Indian education. Section 4101 provides the Commissioner of Education with the responsibility and power to establish schools and maintain courses of instruction for Indian children. The law also empowers the Commissioner to contract with any school district for the education of Indian children. It is through this latter provision that the Commissioner elects to fulfill his responsibility.

Currently the Commissioner contracts with 10 school districts for the education of 1,797 Indian children in Kindergarten through grade 12. In addition to those children attending school off the reservation, contracts are made with the LaFayette, Niagara-Wheatfield and Salmon River Boards of Education for educating 683 students attending three schools located on the reservations. Costs of maintaining and operating the reservation buildings are paid by the Department. Tuition and transportation costs for Indian students enrolled in K-12 are also paid by the Department.

Financial assistance for post-secondary education of Indian students is provided pursuant to Section 4118 of the Education Law. The current program, begun in 1954, is a grant-in aid of $1,000 per year for a four year maximum. Indians residing on reservations and attending accredited post-secondary schools in the state are eligible. Today 140 students receive the grant -- a tripling of grant recipients during the past five years. It is an important means for assisting the Indian in attaining a post-secondary education.

A composite of Indian school enrollment during the past three years is contained in the following table:

ENROLLMENTS:	1967-68	1968-69	1969-70
Reservation Schools	709	820	683
Contract Schools	1,768	1,730	1,797
Aided post-secondary	78	122	140
Non-aided post secondary	NA	20	7
Other K-12 schools	66	66	141
TOTALS:	2,621	2,758	2,768

Source: Annual Report of the Interdepartmental Committee on Indian Affairs 1969-70 p. 4.

During the hearings conducted at the reservations, Indian parents often spoke approvingly of the educational opportunities which their children enjoy. With certain exceptions, the Indian community is generally satisfied with the quality of education provided to them. Often, however, the Indian student or parent would complain about administrative practices of the Department. The most common criticisms and questions were the product of a communication gap between the Indian community and the Education Department. Testimony generally touched upon five areas:

1. Application for the post-secondary education grant-in-aid.
Many Indians were unaware of this benefit, the mechanics of application and the conditions for approval. With rare exceptions the Indians felt that school guidance counselors were unaware, not only of this grant-in-aid, but also of other higher educational assistance available to Indian youth.

2. Adequacy of grant-in-aid for higher education.
Individuals who have benefited from the grant and parents of these students have stated that the grant is insufficient to meet total educational expenses. Many Indians who knew the grant existed criticized its restricted New York State usage. Attendance at a college or university outside of New York State, it was felt, should not exclude one from using the grant. Those who criticized the grant on this basis were unfamiliar with the general philosophy of the Education Department that all State scholarships and grants are for use solely in New York State. Several tribes also believe that past agreements with the State imply the commitment to a completely free education for the Indian as long as he desires to attend school.

3. Current administration of the post-secondary grant-in-aid places undue hardship on the student.
The Subcommittee has heard testimony from several Indian students and other concerned individuals regarding difficulties encountered by grant recipients in the administration of the grant-in-aid. At one hearing a young Indian girl told the Subcommittee that the major reason for her quitting an Agriculture and Technical College was harassment by the school because of delayed payment of funds. At the time of the incident, she had a $500 Indian post-secondary grant-in-aid and a Regents scholarship.

4. Lack of guidance counselors for Indian students.
A significant percentage of Indian students attending colleges are experiencing their first total immersion into non-Indian society. The pressures of higher education coupled with this new experience can produce an emotional hardship often termed "culture shock." Indians suggested quite frequently that an Indian counselor employed by the State Education Department should visit each post-secondary Indian student on a regular basis to aid in the adjustment process.

5. The elimination of hot lunches and other school incidentals formerly provided free of cost.
Indian parents on most of the reservations questioned the Subcommittee or its staff on the shrinkage of incidental benefits enjoyed by Indians in years past. The Indian child today, according to these individuals, does not receive free hot lunches, notebooks, pencils and other items provided the parents when they attended school.

Recommendations

XXV. The Education Department is urged to evaluate its current means of coordinating the activities of those bureaus and divisions involved in Indian Education.

The responsibilities of the Department in providing for Indian education are carried out by five separate units, namely:

Bureau of Elementary School Supervision
Division of Law
Bureau of General Educational Management Services
Bureau of Special Educational Management Services
Division of Finance

These five district bureaus and divisions have no principle coordinator to provide for exchange of information, ideas and approaches concerning Indian education. It is not an infrequent occurrence to have one division or bureau issue a determination or perform an act affecting one or several of the other units without prior consultation. Information exchange among the units appears informal and infrequent. The continuation of this lack of coordination can only provide less than optimum fulfillment of the Department's responsibility concerning Indian education.

Personnel within the Department of Education who deal with Indian affairs have also advocated the creation of a Bureau of Indian Education which would have the necessary resources to deal with Indian education. In their opinion such a unit would also provide leadership to the 10 contracting school districts to encourage and facilitate the development and implementation of needed programs.

XXVI. There is a need for the Education Department to determine what programs, scholarships, grants and benefits, public and private, are available to the New York State Indian student. Guidance counselors in the 10 school districts serving Indian communities should be contacted by the Education Department in order to inform them of the education benefits available to the Indian student oriented toward a post-secondary education.

If Indian students are encouraged to use existing grants, scholarships and programs available through colleges and non-profit organizations, the State's grant-in-aid would be more effective in defraying the rising costs of college education. The use of such outside financial assistance by the Indian might allow the grant-in-aid to be expanded to include such items as vocational training for Indians who have failed to complete high school.

XXVII. There appears to be a need for guidance counselors, familiar with the needs of the Indian student, to visit each post-secondary Indian student on a regular basis.

The Department reports that in the past it found the use of counselors for post-secondary Indian students to be highly effective, and has cited lack of staff as reason for not providing this service in recent years. In its growing awareness and appreciation of the contemporary problems of the Indian student the Education Department recently hired an Indian as Associate in Indian Education. Her responsibilities are probably too numerous, however. Although some involve coordination, they are not great enough to implement recommendation XXV. Included among the Associate's responsibilities, however, is the role of counselor to post-secondary Indian students.

XXVIII. It is recommended that orientation sessions be conducted for teachers recently assigned to schools having Indian students.

Such orientation programs would provide the teacher with an awareness of the Indian and non-Indian community within which he must operate if he is to be effective.

XXIX. The current method of administering the post-secondary grant-in-aid should be thoroughly reviewed by the Education Department.

The Indian students who have received or are receiving grants should be contacted in order to learn of their experiences under the current procedure.

XXX. Reasons for the discontinuance, alteration or addition of benefits such as hot lunches, should be brought to the Indian communities' attention either by the school district or the Education Department.

Many criticisms by the Indians are the product of a failure in communication between the school, the school district, the Education Department and the Indian community. The discontinuance of free hot lunches, notebooks, pencils and other incidentials to school children, for example, should be explained to the Indian community. It is not expected that the Indian will receive special treatment. He should, however, receive

the full benefits to which he is entitled by agreement or statute. Inherent in this approach is the concept of adequate explanation and dialogue concerning these matters.

XXXI. The State Education Department is urged to take a more active role in informing the school districts and the Indian community of State policies regarding Indian education and the status of the Indian parent in the school district. The proposed Commission on Indian Education could be of assistance in this matter.

Although Indians have recently been given the right to participate in school district elections and activities, many do not. Dissemination by the school board of data concerning Indian education in the district would dispel many misconceptions on the part of the Indian and non-Indian community and hopefully provide a basis for honest dialogue.

XXXII. The Subcommittee supports and actively encourages the following proposals and objectives made by staff members of the Education Department.

1. Pre-kindergarten programs as a part of every reservation Indian child's education; this requires working with school administrators, boards of education and, particularly, Indian parents

2. In-depth studies to assess the effectiveness of present elementary school programs as related to Indian pupils in each of the contracting school districts

3. Greater leadership on the part of the Department to encourage high school dropouts between the ages of 18 and 25 to enroll in vocational programs or high school equivalency programs

4. Curriculum materials relating to New York State Indian culture prepared at the State level

5. More attention to continuing education for the adult population on all eight reservations

6. An advisory committee to the Department which will include in its membership each chief school officer and at least one Indian leader from each of the Department's nine districts and eight reservations. This group would meet at least every six months to examine and resolve questions and conflicts arising from the Department's concern for Indian education

7. Summer school experiences in Indian education for selected faculty members of each participating district every year

8. Meetings of school administrators and guidance personnel to explore projected programs and their implementation

B. DEPARTMENT OF HEALTH

Prior to 1955 medical service on the reservations was the responsibility of the Department of Social Welfare (now the Department of Social Services). Since then, the Department of Health has been assigned this function.

Section 201, subdivision 1 (t) of the State Health Law states that the Department of Health "Shall, as provided by law administer to the medical and health needs of the ambulent sick and needy Indians on the reservations." The Department generally fulfills this responsibility by reimbursing the counties for maintaining health clinics on the reservations. The Department itself coordinates the operation of these general medical clinics. According to the Department of Health, an Associate Commissioner coordinates health services at the State level, and delegates direct coordinating responsibility to the Regional Health Directors, particularly those in Buffalo, Syracuse and Albany. The physicians conducting the clinics are employed from the surrounding communities on a part-time basis by the State Health Department. Personnel other than the attending physician are usually provided by the county health departments. These additional personnel include nurses, clerk, sanitarians and sanitation engineers. Clinics operate a total of six hours or less weekly in one or two sessions. On some reservations occasional child health clinics, tuberculosis control clinics and dental clinics are conducted.

Criticisms of health services were most prevalent at the Subcommittee hearings on the Tonawanda, Onondaga and St. Regis reservations. Similar comments at all three reservations included:

a. Clinic hours - The hours are too short. The physician often does not stay the scheduled time.

b. Facilities - Clinic facilities are inadequate. The St. Regis reservation, for instance, has its clinic on the second floor of its school building, necessitating a climb of a flight of stairs for the elderly and sick. The Onondaga facility lacks proper insulation and is difficult to keep warm in the winter. It should be noted, however, that the arrangement with the State of New York states that the Indians must provide the facility and the State Health Department provides the supplies and the services for clinics.

c. Transportation - Transportation to the clinic and other medical facilities is a serious problem. The elderly Indians find it especially difficult.

d. House visits - The clinic physician does not make home visits. Nurses, however, generally perform this function.

In addition, concern was noted regarding the lack of privacy during clinic visits and the great number of patients seen by a single physician in an hour's time. Individuals with clinic responsibilities have also claimed that prescription drugs dispensed at the clinics are not properly packaged. These allegations and complaints merit further investigation. A survey of the Indian community concerning the effectiveness of the services provided and a continual monitoring of these services by the State appears appropriate.

Data regarding the sanitation and water conditions on reservations across the State is lacking. At all six populated upstate reservations a great many homes are without indoor plumbing or toilet facilities. Sewer lines do not enter reservation lands. The Indian leadership in many cases would view the placement of sewer lines on the reservation as a scheme by non-Indians to take reservation land. The tax-free status of the land also proves a handicap in financing such facilities. Informal conversation with members of the Indian community and personal observation, however, suggest that a need does exist for these facilities. The extent of the need and viable means of fulfilling it is unclear.

The Health Department efforts in the prevention and abatement of pollution in groundwaters which serve wells on the St. Regis-Mohawk Reservation appear to be meeting with success. The cooperation between the State Health Department, the Franklin County Economic Opportunity Council, Inc. of Malone, the Health Department's Saranac Lake District Office, the Franklin County Legislature and the reservation leadership is illustrative of what concerted effort can achieve. In 1968 State Health Department engineers completed a comprehensive sanitary survey of wells on the Reservation and in Hogansburg, finding 53 percent of the wells unfit for human consumption. The State Legislature in 1970 granted a special $85,000 appropriation for a pollution prevention and abatement program to deal with this specific problem. It is a long term project, however, which will need continued support and appropriation for completion.

Recommendations

XXXIII. The Health Department is urged to plan and execute an assessment of Indian health needs and the effectiveness of the current clinics in meeting those needs.

The use of well-baby care clinics, dental clinics, eye clinics and tuberculosis control clinics as well as the effective use of health guide personnel should be explored. Such an assessment should include a survey of the reservation residents which would elicit their opinions and suggestions.

XXXIV. The State Health Department is urged to meet with tribal representatives and work in concert with the proposed Commission on Indian Affairs in order to acquire support for a survey of the sanitation needs of the reservation community.

Upon completion of such survey, practical recommendations should be made to remedy any deficiencies found to exist. Copies of the survey and recommendations should be presented to the legislative Subcommittees on Indian Affairs.

XXXV. The State should explore means of providing transportation to medical facilities for those Indians who need medical assistance but who have no means of transportation.

XXXVI. The State should explore the possibility of renovating structures used for clinic services in order to create a more satisfactory and hygienic environment for clinic operation.

XXXVII. It is essential that proper action be taken by the Health Department to provide for routine pharmacy inspection and control of drugs maintained in any medical clinic servicing the Indian community and to provide also for the packaging of prescriptions to comply with the standards of the State Board of Pharmacy.

C. DEPARTMENT OF TRANSPORTATION

Construction, maintenance and improvement of highways and bridges on Indian reservations is the responsibility of the New York State Department of Transportation. The principal mandate can be found in section 53 of the State Highway Law which reads:

> The Department of Transportation shall have supervision and control in the construction, maintenance and improvement of all highways and bridges constructed by the State on any Indian Reservation and may make and enforce such reasonable orders, rules and regulations concerning their use as it shall deem necessary. The cost of such maintenance and construction and improvement, and removal of snow therefrom shall be paid by the State out of any moneys appropriated for the maintenance, construction and improvement of highways.

Other statutes concerning the Department of Transportation and Indian reservations are Highway Law, section 53-A (power to make agreements) and the Vehicle and Traffic Law sections 1620 and 1621 (power of Department to make traffic regulations). Each reservation is serviced by regional offices of the Department. Numbered State routes running through reservations receive the same maintenance as other State highways. The six regional offices maintain approximately 180 miles of Indian reservation roads (roads other than numbered State routes within reservation boundaries). The Department's expenditure for maintenance of these 180 miles for the 1969-70 fiscal year totaled $262,414.

Several upstate reservations had criticisms regarding the maintenance and improvement of roads. Clearing of brush along the roadside, widening of roads and posting of street and speed signs were common requests.

Recommendations

XXXVIII. Semi-annual, informal meetings between tribal leaders and the Department's regional office representatives should be conducted on the reservation.

Many problems and grievances of the Indian community which concern the Department of Transportation are only exacerbated by a lack of communication. Semi-annual meetings would greatly assist in alleviating problems brought to the Subcommittee's attention.

D. COMMERCE DEPARTMENT

The Commerce Department's involvement in New York State Indian Affairs is not specifically mandated by statute. As a member of the Interdepartmental Committee on Indian Affairs it has contributed advice and assistance to several Indian communities and individuals. Its largest contribution of services has been directed toward the promotion and development of the Seneca Industrial Park on the Cattaraugus Reservation. The Department, working through its Ogdensburg regional office has also assisted in the creation of the Akwesasne Mohawk Indian Village at the St. Regis-Mohawk Reserve. The philosophy of the Department in dealing with Indian tribes was stated by a departmental representative to be "the same as that toward all other groups with which we deal." The Department does not set the goals, objectives and priorities for economic development. That responsibility falls upon the people who are served. Advice and assistance to implement these goals, however, will be provided by the Commerce Department.

The Indian in New York State today has a great interest in Indian cultural identity and awareness. He is becoming more aware and skillful in the traditions, dances, languages and crafts which are a part of the Indian culture. The Indian community, in general, desires to share this knowledge of its heritage. Pow-wows, craft shows and Indian displays are showing a prolific growth. Members of the Tuscarora, St. Regis-Mohawk, Tonawanda, Seneca and the Shinnecock reservations have expressed particular interest in tourist oriented enterprises. Many Indian artists desire to place their works on exhibition, but do not have the expertise to establish a successful display.

Recommendations

XXXIX. The Department should meet with the tribal leaders and members of the reservations in order to explain its function and the services it has available at their request. In order to provide for continual communication, semi-annual meetings should be held on or near the reservation.

The Commerce Department could appropriately take a more active approach in assisting the Indian with the economic development of the Indian community. A program of informing the Indian population of the services it offers, the expertise at their disposal and the qualifications needed for the Department's assistance would be of value. Although the Indian reservations are generally adverse to the establishment of industrial parks or developments on reservation lands, there is every indication that they would be receptive to the Commerce Department's assistance in establishing tourist attractions and Indian craft exhibits, which would in turn aid the reservation economy.

E. STATE POLICE

According to a State Police spokesman, in testimony before the Subcommittee, the authority of the Division of State Police with responsibility for protection on the Indian reservation is found "under the Indian Law of 1948 and is set forth there under Title XXV, Section 232 of the United States Code, annotated, and also the Executive Law which provides for the establishment and the operation of the Division of State Police." The Division patrols the reservations,and as a matter of course,patrols the State highways which run through most of the reservation. Except for the Poospatucks in Suffolk county, each reservation is covered by a State Police zone lieutenant. The Poospatuck reservation, due to mutual agreement of the Indians and the State and town police, is covered by the town police.

According to a Division spokesman, the supervisors in the field, generally the zone lieutenants, have responsibility for "maintaining a constant relationship with all community bodies, district attorneys, judges, and other officials which in their discretion would prove necessary in a case of any difficulty or just as a part of good public relations." The Division states that, many times out of necessity and often times out of a personal rapport which an individual officer has developed, personal contact is made with either a tribal marshal or a tribal official, when the State Police enter the reservation.

Indians have expressed concern over what they consider delayed response by the State Police in answer to calls for assistance. In response to the Subcommittee's query,a Division spokesman explained:

> "In every station there are posts established, and on every shift there is a unit assigned to one or more posts, and in a normal call for service the desk man will call the car assigned to that post, regardless of where he is. It may be further than a car assigned to an adjacent post, because of circumstances. If it is an emergency situation where time -- the response... is vital, then he would call the nearest vehicle to it, and probably also assign the post car to proceed to that location.
>
> "Often times our response to a call is delayed. We have large patrol posts in some parts of the State, and cars are often tied up on another situation and they get away as soon as they can afford to go, according to the emergency situation, but again, if any specific difficulties are apparent in this area we want to know about them in Albany, and I am sure that the Zone Lieutenants want to know about them in the field."

There is no fixed pattern for cooperation of the State Police with other law enforcement bodies having joint responsibility for law enforcement on reservations. It is established on a zone command basis mostly with local sheriffs. A good deal of flexibility in structure is afforded mainly because some county sheriff departments are full-fledged law enforcement bodies, and others serve only a limited civil function or only as a minor road patrol service. If, however, a caller specified that he desired the State Police and not a sheriff, the State Police would respond. Only in urgent matters where State cars are far from the scene would the State Police call for assistance from the sheriff's office.

In addition, most of the criticisms concerning the Division of State Police appear to be the product of a lack of understanding of police procedures by the Indians. Although the Division has established favorable rapport with several reservations, it appears to have been less than successful in many upstate reservations.

Recommendations

XL. Informal meetings between representatives of the Division of State Police and tribal representatives should be held at least bi-annually.

Meetings of this nature would provide both parties the opportunity to clarify complaints regarding such matters as time lapses in responding to calls for police assistance, the role of the State Police vis-a-vis the reservation, the relationship which exists between the local law enforcement agencies and the State Police, and the proper method of acquiring State Police assistance. Once these basic points are clarified, the meetings could perform a valuable service as a vehicle to create favorable community relationships.

XLI. The reservation community should be made aware of the recruitment programs of the Division.

The Division of State Police has five uniformed personnel of Indian ancestry. At times, some of these personnel patrol reservation areas. Unfortunately it appears that the reservation community is unaware of this fact.

Although the State Police do not have a minority recruitment program, it has itself suggested that notices of a recruitment nature be sent to the reservation.

XLII. The tribal marshals, where existent, should be utilized as much as practicable in law enforcement on the reservation.

The tribal marshals, as members of the community, could be of great assistance to the State Police in the performance of their duty. A general standard procedure could be established whereby tribal marshals, along with the tribal officials, are notified when officers enter the reservation for enforcement purposes. Presently, this notification process is not formalized and rests with the discretion of the zone lieutenant.

XLIII. Consideration should also be given to training tribal marshals in police methods and granting them peace officer status. The possibility of ultimately granting them police officer status would be a proper subject for consideration by the proposed Commission on Indian Affairs.

The Division of State Police is attempting to implement many of the above recommendations.

F. ENVIRONMENTAL CONSERVATION DEPARTMENT

The problems and issues involving the Indian and the Environmental Conservation Department were stated earlier in this report under the section Hunting and Fishing. Although there exist only five sections of the Conservation Law* which apply to Indians and their lands, the problems of enforcement or application are numerous. The problems become more complex because the law, the treaties and the Attorney General's opinions on these matters do not coincide. There is a definite need for uniform application of clarified law on Indian hunting and fishing rights.

Recommendation

XLIV. The adversary positions maintained by both the Indians and the Environmental Conservation Department enforcement officers must be dissolved. In addition to the recommendations made earlier in this report, it is recommended that regular informal meetings be held on the reservations between departmental representatives and tribal leaders in order to resolve difficulties and to eliminate problem areas.

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*Sections 210, 211, 213, 220, 296.

G. DEPARTMENT OF SOCIAL SERVICES

The State Department of Social Services provides the following to reservation Indians: home relief, old age assistance, aid to dependent children, assistance to the blind, aid to the disabled, child welfare services, adult institutional care, hospitalization, and removals and burials. The State training schools for delinquents, Womans Relief Corps Home for Veterans and the Commission for the Blind also provide care to Indians.

The Department's full program for public assistance and care is available to the Indian whether he resides on or off the reservation. Local public welfare departments, however, administer the aid programs for reservation Indians and receive full reimbursement by the State. The State charges for public and medical assistance to on-reservation Indians totaled $1,043,934 in fiscal year 1969-70.

The Social Services Department also (1) maintains the Tonawanda Indian Community House which serves as a cultural, social, educational and health center for the Tonawanda Indian Reservation; (2) retains a part-time Indian agent for the Onondaga Nation and a part-time advisory attorney for the Tonawanda Band of Seneca and (3) distributes annuities as provided for in treaties and agreements concerning land sales.

Since 1929, the Department has employed a full-time Supervisor of Indian Affairs. The position is currently held by an Indian social worker whose office is located in Buffalo. Her duties consist of advising and guiding Indians in educational and vocational planning, and in the use of various State, Federal and local resources available to them; encouraging the formation of community organizations and self-help groups; and obtaining needed services in connection with problem of health, employment, property rights, recreation, domestic and social relations.

The Supervisor of Indian Affairs works closely with the Director of Indian Services in performing these responsibilities.

Recommendations

XLV. The personnel employed by the Commission on Indian Affairs will perform many of the current functions of the Supervisor of Indian Affairs. It is hoped that added manpower will provide a more managable approach. The experience and expertise of the Supervisor of Indian Affairs are invaluable assets. It is recommended that in addition to her current responsibilities, the Supervisor of Indian Affairs become an active consultant to the Commission on Indian Affairs.

SPECIAL BILLS

The following items are matters which can be acted upon by special legislation. Many of these were brought to the attention of the Subcommittee during the course of its public hearings. Other items listed amend or repeal sections of State law which are inapplicable to the needs of the Indian today.

XLVI. In recognition of the many contributions which the Indian people have given to the non-Indian society and to heighten the awareness of the non-Indian community to the culture of the Indian, a Joint Resolution of the Legislature providing for an Indian Week in New York State should be enacted.

XLVII. The tribal leaders on many of the reservations do not possess an updated copy of the New York State Indian Law. Legislation should be enacted which would ensure that a copy of Chapter 26 of the Consolidated Laws is provided to each tribal government, accompanied by yearly additions necessary to keep it current.

XLVIII. At the request of the tribal officials of the St. Regis Mohawk Reservation, the Tonawanda Band of Senecas and the Shinnecock Tribe, legislation should be enacted to allow for a survey of their reservations to determine boundaries.

XLIX. The Subcommittee has heard contentions from nearly all reservations that section 15 of the Indian Law provides free access to the New York State Thruway for Indians in New York State, and that such free access has not been and is not now granted. Regarding turnpikes the law specifically states that:

> §15. Freedom from toll and ferriage
>
> The Indians of the Six Nations may pass and repass free of toll and ferriage, at all seasonable times of the day, on any turnpike road, which shall have been established since April sixth, eighteen hundred and three, or which shall hereafter be established, leading from or through the town of Canandaigua to Buffalo creek or its vicinity, and over any toll bridge between those places, and at the ferry across the Niagara river at or near Black Rock, or at such place or places in its vicinity where any ferry shall have been established since such time, or shall hereafter be established.

According to an opinion of the Attorney General, the historical analysis of this statute suggests that it was meant to apply to three private turnpikes created in 1803 and not to the New York State Thruway.

In order to meet the modern needs of the New York State Indian, to encourage frequent open communication between the Indian and New York State and to give contemporary value to this section of law, it is recommended that Section 15 be amended to provide free use of the New York State Thruway by New York State Indians.

L. The Tonawanda Band of Senecas have voiced concern over the fact that they are not involved in the decision regarding appointment of their attorney. Section 81 of the Indian Law should be amended to allow for their approval of the attorney appointed by the appointing officer. The annual salary of $150 for such attorney should be reviewed and a more realistic compensation provided.

LI. Section 99, of the Indian Law concerning annual assessment of highway labor for male Indians by the Tuscarora chiefs in council, should be repealed. It is an antiquated law with no real relevance to contemporary needs of the Tuscarora people.

LII. The St. Regis Reservation has in recent years provided for women's sufferage in its tribal elections. Such a provision should be incorporated in section 108 of the Indian Law (qualifications of voters). The section, as it currently stands, restricts sufferage to male Indians.

LIII. At the request of the elected tribal officials of the St. Regis Indian Reservation, legislation should be enacted to amend section 110 of the Indian Law, so that the day of election for tribal officials may be changed from Monday to Saturday. A number of Mohawks work in high steel and can come home to the reservation only on weekends. It is hoped that this change will provide a better opportunity for participation in tribal elections.

LIV. In many respects the greatest threat to the security of the reservation land is the Federal and State governments. In relatively recent years no fewer than five reservations have suffered land losses due to Federal or State action. The reservations appear to be targeted as obstacles placed in the way of proposed dams, flood control projects and roads.

In order to preserve the remaining lands of the Indian community and to allay the Indian fear of further land loss, the Subcommittee proposes that a constitutional amendment be introduced in the Legislature to provide that reservation lands be exempt from the eminent domain of the State.

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ADDENDUM TO REPORT OF THE ASSEMBLY
SUBCOMMITTEE ON INDIAN AFFAIRS

The following bills, sponsored by the Subcommittee on Indian Affairs during the 1971 Legislative session, have been signed into law by the Governor: A 6921, A 6925, A 6928, A 6929 and A 6931-A (S 30,059).

The following bill, sponsored by the Subcommittee on Indian Affairs, has been vetoed: A 6926-A.

A 6921 - Under this bill the advice and consent of the Tonawanda Nation of Indians will be sought when appointing their attorney pursuant to Section 81 of the Indian Law. The attorney's annual salary is raised from $150 to $500. Refusal by the attorney to prosecute actions and proceedings would be reviewable by the State Board of Social Welfare. Additional annual compensation, not to exceed $1,000, can be given to the attorney at the determination of the State Board. (PASSED) [Chap. 959, Laws of 1971]

A 6925 - This bill was introduced at the request of the St. Regis tribal officials. Tribal elections will be held on the first Saturday in June rather than on the first Monday after the first Tuesday in June, thereby providing greater opportunity for those Indians who work in "high steel" and are away from the reservation during the week to participate in tribal elections. (PASSED) [Chap. 645, Laws of 1971]

A 6928 - This bill repeals section 99 of the Indian Law which provided that Tuscarora chiefs in council may annually assess each male Indian up to fifteen days in any one year for highway labor and fine those not complying with the assessment. (PASSED) [Chap. 512, Laws of 1971]

A 6929 - This bill was introduced at the request of the tribal officials of the St. Regis reservation. This bill provides that St. Regis tribal members 18 years of age are eligible to vote in tribal elections. (PASSED) [Chap. 655, Laws of 1971]

A 6931-A (S 30,059) - This bill returns five wampum belts to the Onondaga reservation located at Nedrow, New York. Transfer is subject to the construction of a museum by the nation on the reservation. Provisions are also included to insure preservation of the wampum. The State museum is to construct a facsimile of the belts prior to January 2nd, 1973. (PASSED) [Chap. 960, Laws of 1971]

A 6926-A - This bill would have amended the Conservation Law to provide that enrolled Indians may hunt and fish on reservation land subject solely to the rules, regulations and fish and game laws established by the governing bodies of each Indian reservation. (VETOED)